

110TH CONGRESS
1ST SESSION

H. R. 3718

To amend the Elementary and Secondary Education Act of 1965 to require the Secretary of Education to address conflicts of interest associated with use of advisory committees and technical assistance providers in the administration of such Act.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 2, 2007

Mr. ALTMIRE (for himself, Mr. GEORGE MILLER of California, Mr. YARMUTH, Mr. HOLT, and Mr. VAN HOLLEN) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the Elementary and Secondary Education Act of 1965 to require the Secretary of Education to address conflicts of interest associated with use of advisory committees and technical assistance providers in the administration of such Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Educational Advisor
5 and Contractor Integrity Act”.

1 **SEC. 2. PREVENTING CONFLICTS OF INTEREST.**

2 Subpart 2 of part E of title IX of the Elementary
3 and Secondary Education Act of 1965 (20 U.S.C. 7901
4 et seq.) is amended by adding at the end the following:

5 **“SEC. 9537. PREVENTING CONFLICTS OF INTEREST.**

6 **“(a) SERVICE ON ADVISORY COMMITTEES.—**

7 **“(1) SCREENING PROCESS FOR ADVISORY COM-**
8 **MITTEE CANDIDATES.—**

9 **“(A) IN GENERAL.—**The Secretary shall
10 establish a screening process to address con-
11 flicts of interest on the part of an individual
12 who is being considered for service on an advi-
13 sory committee established or used by the Sec-
14 retary in the administration of this Act or any
15 part of this Act.

16 **“(B) FACTORS.—**In addition to the disclo-
17 sure requirements of the Ethics in Government
18 Act of 1978 (5 U.S.C. App. 38), the screening
19 process shall consider whether an individual
20 has—

21 **“(i)** a past (withing the preceding 3
22 years) or present professional affiliation
23 with an organization that promotes a peda-
24 gogical approach that is linked to specific
25 products or services;

1 “(ii) a past (within the preceding 3
2 years) or present involvement with a State
3 educational agency or a local educational
4 agency that may receive funds under this
5 Act; or

6 “(iii) a past (within the preceding 3
7 years) or present direct or an indirect fi-
8 nancial interest in a product or service
9 that may, in fact or appearance, com-
10 promise the integrity of the advice or rec-
11 ommendations of the individual.

12 “(C) WAIVERS.—

13 “(i) IN GENERAL.—Where an indi-
14 vidual being considered for service on an
15 advisory committee described in paragraph
16 (1) has a conflict of interest, the Secretary
17 may, in consultation with the Office of
18 General Counsel, grant an exemption pur-
19 suant to section 208(b)(3) of title 18,
20 United States Code, if, considering the ad-
21 ditional requirements of this subsection—

22 “(I) the Secretary can dem-
23 onstrate that the conflict does not
24 compromise the integrity, in fact or in

1 appearance, of the efforts of the advi-
2 sory committee;

3 “(II) the conflict can be suffi-
4 ciently mitigated; and

5 “(III) the Secretary can dem-
6 onstrate that reasonable efforts were
7 made to identify alternate individuals
8 not having a conflict.

9 “(ii) REPORTING.—The Secretary
10 shall provide to the Congress an annual re-
11 port containing information on any exemp-
12 tion granted under clause (i) to an advi-
13 sory committee member, which shall in-
14 clude—

15 “(I) the identity of each exempt-
16 ed individual;

17 “(II) a detailed description of the
18 conflict of interest;

19 “(III) a detailed description of
20 the efforts made to identify alternate
21 individuals; and

22 “(IV) a detailed description of
23 the conflict mitigation efforts.

24 “(2) ADVISORY COMMITTEE MEMBERS.—

1 “(A) POLICIES AND PROCEDURES.—The
2 Secretary shall work with the Office of Govern-
3 ment Ethics pursuant to the Ethics in Govern-
4 ment Act of 1978 (5 U.S.C. App. 38) to de-
5 velop policies and procedures to address con-
6 flicts of interest on the part of an individual
7 who is serving on an advisory committee de-
8 scribed in paragraph (1), including, at a min-
9 imum, the adoption of an alternative confiden-
10 tial financial disclosure form for such indi-
11 vidual.

12 “(B) SPECIAL GOVERNMENT EMPLOY-
13 EES.—An individual who is serving on an advi-
14 sory committee described in paragraph (1) shall
15 be considered a special Government employee,
16 as defined in section 202(a) of title 18, United
17 States Code, for purposes of chapter 11 of part
18 I of such title.

19 “(3) SECRETARIAT.—Prior to the convening of
20 any group of individuals who will serve in a capacity
21 to render advice or recommendations to the Sec-
22 retary, the Secretary shall consult with the Com-
23 mittee Management Secretariat within the General
24 Services Administration to obtain advice as to the

1 applicability of Federal Advisory Committee Act (5
2 U.S.C. App. 1).

3 “(4) DEFINITION.—For purposes of this sub-
4 section, the term ‘advisory committee’ has the mean-
5 ing given such term in section 3(2) of the Federal
6 Advisory Committee Act (5 U.S.C. App. 1).

7 “(b) TECHNICAL ASSISTANCE.—

8 “(1) SCREENING PROCESS FOR TECHNICAL AS-
9 SISTANCE PROVIDER CANDIDATES.—

10 “(A) IN GENERAL.—The Secretary shall
11 establish a screening process to address con-
12 flicts of interest on the part of individuals who,
13 and entities that, are being considered for serv-
14 ice as a technical assistance provider in the ad-
15 ministration of this Act or any part of this Act.

16 “(B) ELEMENTS.—The screening process
17 shall consider, among other factors, whether an
18 individual or entity has—

19 “(i) a past (withing the preceding 3
20 years) or present professional affiliation
21 with an organization that promotes a peda-
22 gogical approach that is linked to specific
23 products or services;

24 “(ii) a past (within the preceding 3
25 years) or present involvement with a State

1 educational agency or a local educational
2 agency that may receive funds under this
3 Act; or

4 “(iii) a past (within the preceding 3
5 years) or present direct or an indirect fi-
6 nancial interest in a product or service
7 that may, in fact or in appearance, com-
8 promise the integrity of the technical as-
9 sistance being provided.

10 “(2) REQUIREMENTS FOR CONTRACTING.—

11 “(A) PRIOR TO AWARD.—The Secretary
12 shall require that, prior to awarding a technical
13 assistance contract, potential technical assist-
14 ance providers—

15 “(i) provide documentary evidence
16 that the technical assistance provider will
17 adopt and effectively implement policies
18 and procedures to address conflicts of in-
19 terest; and

20 “(ii) disclose any conflicts of interest.

21 “(B) CONTRACT TERMS.—All technical as-
22 sistance contracts shall require the technical as-
23 sistance provider—

24 “(i) to implement fully the conflicts of
25 interest policies and procedures provided to

1 the Secretary prior to awarding of the con-
2 tract;

3 “(ii) to ensure that any subcontracted
4 individuals or entities, at any tier, adopt
5 and implement the same policies and pro-
6 cedures as the primary technical assistance
7 provider; and

8 “(iii) to report to the Secretary any
9 previously unidentified conflicts and the
10 measures taken to avoid or mitigate such
11 conflicts not later than 10 days after be-
12 coming aware of such a conflict.

13 “(3) MONITORING.—The Secretary shall de-
14 velop and implement a process to continually mon-
15 itor whether technical assistance providers are ap-
16 propriately implementing their conflict of interest
17 policies and procedures.

18 “(4) DEFINITION.—For the purposes of this
19 subsection, the term ‘technical assistance provider’
20 means any entity or individual providing technical
21 assistance in the administration of this Act, or any
22 part of this Act, directly or indirectly, to the Sec-
23 retary, or on behalf of the Secretary, including—

24 “(A) a contractor; and

1 “(B) a contractor’s subsidiaries, sub-
2 contractors, employees, and other agents and
3 affiliates.

4 “(c) DEADLINE.—The Secretary shall carry out the
5 duties described in this section not later than 180 days
6 after the date of the enactment of this section.”.

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